IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 31380 of 2005(I)

OS.566/2002 of ADDL.MUNSIFF COURT,NEDUMANGAD
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PETITIONERS
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1. THANKAN, AGED 52 YEARS,
MEKKUMKARA PUTHEN VEEDU, CHOZHIYACODE, KOLLODU MURI, KULATHUMMAL VILLAGE.

2. REENA, AGED 30 YEARS, MEKKUMKARA PUTHEN VEEDU, CHOZHIYACODE, KOLLOODU MURI, KULATHUMMAL VILLAGE.

BY ADV. SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.

RESPONDENTS:
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1. YOHANNAN, AGED 48 YEARS, THEKKUMKARA PUTHEN VEEDU, CHOZHIYACODE, KOLLODE MURI, KULATHUMMAL VILLAGE.

2. SUDHA, THEKKUMKARA PUTHEN VEEDU, CHOZHIYACODE, KOLLODE MURI, KULATHUMMAL VILLAGE.

R1 BY ADV. SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.VISHNU S.CHEMPAZHANTHIYIL
SRI.MANOJ RAMASWAMY
SRI.VIVEEJA RAVEENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 31380/05)

PETITIONERS' EXTS.:

EXT.P1: TRUE PHOTOCOPY OF THE ORIGINAL PLAINT IN O.S.566/02 PENDING BEFORE THE ADDITIONAL MUNSIFF'S COURT, NEDUMANGAD.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT SUBMITTED BY PETITIONERS WHO ARE THE ADDITIONAL DEFENDANTS 3 AND 4 IN THE SUIT.

EXT.P3: TRUE COPY OF I.A.3023/05 DATED 2.8.2005.

EXT.P4: TRUE COPY OF THE OBJECTION FILED BY THE PLAINTIFFS TO EXT.P3.

EXT.P5: TRUE COPY OF THE COMMISSION REPORT SUBMITTED ON 3.1.2004.

EXT.P6: TRUE COPY OF THE ORDER IN I.A.3023/05 IN O.S.566/02 OF THE ADDITIONAL MUNSIFF'S COURT, NEDUMANGAD.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.31380 of 2005

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Dated: 6th June, 2007

JUDGMENT

In this Writ Petition under Article 227 of the Constitution the additional defendants in a suit for fixation of boundary impugns Ext.P6 order passed by the learned Munsiff on an application filed by them for issuance of a commission for preparing a plan regarding the boundaries sought to be fixed. The petitioners are additional defendants 3 and 4 in the suit and they were impleaded only at a later stage on the basis of a contention by the original defendants that the petitioners are also necessary parties to the suit property and are having independent rights over the property. The learned Munsiff dismissed the commission application noticing that there is already a commission report and plan after measurement of the properties pursuant to order in an earlier commission application and that the original defendants did not ask for ascertaining the matters now sought to be reported by the petitioners during inspection. The learned Munsiff also noticed that the original defendants had filed I.A.No.274/04 praying for a report regarding the aspects mentioned in the instant commission application and that the said application had been dismissed. It appears that the learned Munsiff was carried

away to some extent by the fact that there is close relationship between the original defendants and the present petitioners who are respectively the husband and wife of the original defendants.

2. Heard Mr.G.Ram Mohan, counsel for the petitioners and the counsel for the 1st respondent.

3. Mr.Ram Mohan submits that the petitioners were impleaded at a subsequent stage only and that if they had been impleaded at the time when the original commission inspection took place it would have been possible for them to seek a report of the aspects now sought to be reported on. The petitioners though husband and wife respectively of D1 and D2 are having independent rights over the property. Therefore the dismissal of I.A.No.274/04 filed by the original defendants cannot stand in the way of the instant I.A. being allowed.

4. Learned counsel for the 1st respondent would submit that in the nature of the reliefs claimed in the suit which is one for fixation of boundary, there is no scope for any conflicting contentions between the four defendants. Counsel also points that the very same counsel appears for all the four defendants. The application was only a machination for protracting the trial of the suit.

5. I am also in agreement with the learned counsel for the 1st respondent that in a suit for fixation of boundary especially when the fellow defendants are spouses and are in joint enjoyment of the disputed properties, there is no scope for any conflicting contentions regarding the identity of the boundary to be fixed. But one submission of Mr.Ram Mohan has some appeal. According to him, one K.G.Poulose, an efficient private surveyor who also assisted the Advocate Commissioner has prepared a plan after conducting measurement pursuant to a direction by the petitioners and that plan varies considerably from the plan submitted by the Advocate Commissioner before the court. If the Commissioner is directed to have a measurement of the properties on the basis of the plan prepared by K.G.Poulose, it will be possible to identify the boundary more correctly. Considering the above submissions, I dispose of the Writ Petition directing the learned Munsiff to depute the very same Advocate Commissioner to have a further inspection of the properties and measurement for cross checking the plan already submitted with the plan prepared by K.G.Poulose. The learned Munsiff will direct the surveyor who prepared the plan already filed by the Advocate Commissioner and Mr.K.G.Poulose also to be present at the time of

inspection. The impugned order is set aside and the I.A. filed by the petitioners will stand allowed. All expenses necessary for the further works required to be done as per this judgment will be borne by the petitioners only and such cost will not form part of the costs of the suit.

srd **PIUS C.KURIAKOSE, JUDGE**